IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9752 of 1998
with
SPECIAL CIVIL APPLICATION No. 6649 of 1990
with
SPECIAL CIVIL APPLICATION No. 2994 of 1991
with
SPECIAL CIVIL APPLICATION No. 6436 of 1997
with
SPECIAL CIVIL APPLICATION No. 8668 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES :: 2 to5 : NO

GUJARAT AGRICULURAL UNIVERSITY

Versus

LAXMIBEN CHHIBABHAI TALAVIYA

Appearance:

1. Special Civil Application No. 9752 of 1998
MR SA DESAI for Petitioner
MR DS VASAVADA for Respondent No. 1, 2

2. Special Civil ApplicationNo 6649 of 1990
MR SA DESAI for Petitioner
MR DS VASAVADA for Respondent No. 1, 2

3. Special Civil Application No. 2994 of 1991
MR SA DESAI for petitioner
M/s Patel Advocates for Respondent No.1

MR DS VASAVADA for Respondent No. 2

4. Special Civil Application No. 6436 of 1997
MR SA Desai for Petitioner
MR AS Dave for Respondent No. 1
M/s. Patel Advocates for Respondent no.2

5. Special Civil Application No. 8668 of 1997
MR SA DESAI for Petitioner
MR DS VASAVADA for Respondent NO. 1
M/s Patel Advocates for Respondent No.2

CORAM : MR.JUSTICE H.K.RATHOD
Date of decision: 02/05/2000

COMMON JUDGEMENT

Heard the learned advocates for the respective parties.

2. In all these petitions, the orders passed by the Controlling Authority under the Payment of Gratuity Act duly confirmed by the Appellate Authority under the Payment of Gratuity Act, 1972 are under challenge.

3. The main contention raised by the Gujarat Agriculture University [hereinafter referred to as, `the University'] is that the University is engaged in the activities of teaching, research and development of agriculture and therefore the provisions of Payment of Gratuity Act, 1972 [hereinafter referred to as, `the Act'] are not applicable to it. Learned advocate for the petitioner-University pointed out that the University is not engaged in any commercial activity, and therefore, it is not covered under the provisions of Sec. 1 (3) of the Act. It is further pointed out that since the University is not a factory or a shop or an establishment, and since it is carrying on activities of teaching, research and development of agriculture alone, the provisions of Act would not be applicable. It was also submitted that the University has its own Rules & Regulations in so far as gratuity is concerned, and therefore, the Payment of Gratuity Act would not be applicable. Learned advocate further submitted that the Controlling Authority has also not taken into consideration the above contentions raised by the petitioner.

In light of the aforesaid contentions, it is now necessary to consider the provisions of Sec. 1 (3)(c) of

the Payment of Gratuity Act, 1972 which reads as under :-

> `1(3)(c) Such other establishments or class of establishments in which 10 or more employees are employed or where employed on any day of the preceding 12 months as the Central Government may by notification specify in this behalf.'

The Central Government has issued Notification No. 5/42013/195-SS II dated 3rd April, 1997 wherein the Central Government has issued the said Notification in exercise of the powers conferred by Clause (c) of Sub-section 3 of Section 1 of the Payment of Gratuity Act, 1972. The Central Government thereby specified the Educational Institutions in which 10 or more persons are employed or where employed on any date preceding 12 months as a class of establishment to which said Act shall apply with effect from the date of publication of that notification. It is further provided that nothing contained in this Notification shall effect operation of notification of Ministry of Labour S/00 of 1982. In view of the said notification issued by the Central Government while exercising powers under Sec. 1 (3) (c), the Educational Institutions are covered and Gratuity is made applicable in view of the above notification. Therefore, the said contention raised by the petitioners cannot be sustained in light of the above notification. In respect to the said point, decision in the matter of Premlata Digambar Raodeo v. Principal, St. Phelomine's Convent High School, Nasik & Ors., reported in [1997 (1) CLR 596] is relevant wherein the Division Bench of High Court of Judicature at Bombay has observed that, `respondent no. 1 is a private unaided primary school - Petitioner was employed in that school from where she retired after puttting in 17 years service. Her claim for gratuity was denied by respondent no. 1-Controlling Authority under the Payment of Gratuity Act and Appellate Authority also did not grant petitioner's claim for gratuity. The claim is denied on the ground that respondent no. 1 is not an establishment and petitioner was not an employee as defined under the Act. Hence, it was held that respondent is an establishment, petitioner teacher was an employee and she is entitled to gratuity as claimed by her.' Therefore, the said contention raised by the petitioner cannot be sustained.

Except the aforesaid contentions, the petitioner has not raised any other contentions on the merits of the matter. Therefore, these writ petitions are required to be disposed of and the order passed by the Controlling Authority and the Appellate Authority is not required to

be disturbed. Accordingly, these petitions are disposed of. Rule issued in each petition stands discharged with no order as to costs. Ad-interim/interim relief granted in each of the petition stands vacated. The petitioner-University is directed to implement the orders passed by the Controlling Authority and arrange to pay the amount to the concerned employee within a period of four weeks from the date of receipt of certified copy of this judgment. Office is directed to send the writ of this order immediately to the petitioner-University.

[H.K Rathod, J.]

Prakash*